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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 EDWARD MAKARON, on behalf of himself ) Case No. 2:15-cv-05145-DDP-E  
16 and all others similarly situated, )  
17 Plaintiff, )  
18 vs. )  
19 ENAGIC USA, INC., )  
20 Defendant. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

1. NEGLIGENCE VIOLATIONS OF THE  
2. WILLFUL VIOLATIONS OF THE  
PROTECTION ACT [47 U.S.C. §227 ET  
SEQ.]

**DEMAND FOR JURY TRIAL**

Plaintiff, Edward Makaron (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of ENAGIC USA, INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting

1 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act,  
2 *47. U.S.C. § 227 et seq.* ("TCPA"), thereby invading Plaintiff's privacy.  
3

4 **JURISDICTION & VENUE**  
5

6 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff, a resident  
7 of California, seeks relief on behalf of a Class, which will result in at least one class member  
8 belonging to a different state than that of Defendant, a company with its principal place of  
9 business and State of Incorporation in California state. Plaintiff also seeks up to \$1,500.00 in  
10 damages for each call in violation of the TCPA, which, when aggregated among a proposed class  
11 in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,  
12 both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of  
13 2005 ("CAFA") are present, and this Court has jurisdiction.  
14

15 3. Venue is proper in the United States District Court for the Central District of  
16 California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because Defendant does  
17 business within the state of California and Plaintiff resides within this District.  
18

19 **PARTIES**  
20

21 4. Plaintiff, EDWARD MAKARON ("Plaintiff"), is a natural person residing in  
22 Chatsworth, California and is a "person" as defined by *47 U.S.C. § 153 (10)*.  
23

24 5. Defendant, ENAGIC USA, INC. ("Defendant"), is a nationwide distributor of  
25 alkaline water filtration systems and is a "person" as defined by *47 U.S.C. § 153 (10)*.  
26

27 **FACTUAL ALLEGATIONS**  
28

6. Beginning in or around May of 2015, Defendant contacted Plaintiff on his cellular  
telephone, (310) 210-3272, in an effort to sell or solicit its services.  
7.

On May 18, 2015, Plaintiff received a call from Defendant from telephone  
number 469-340-4080. Defendant utilized an "artificial or prerecorded voice" as prohibited by

1       47 U.S.C. § 227(b)(1)(A), and played a prerecorded message for Plaintiff that lasted 22 minutes,  
 2 which appears to be part of a standardized and widespread advertising campaign. During this  
 3 call, Defendant's agents sought to enlist Plaintiff as an agent-sales representative for Enagic-  
 4 Kangen alkaline water filtration systems. During this recording, the Enagic representative  
 5 informs the new potential recruit that as part of their enlistment package, they will receive access  
 6 to the robo-dialing tool used to contact Plaintiff and access to a "list" of potential customers  
 7 towards whom they can place such calls.

8.       On May 20, 2015, Plaintiff received a call from one of Defendant's  
 9 representatives (Gary Nixon), who tried to recruit Plaintiff as a salesperson for Defendant, and  
 10 suggested Plaintiff watch a video about Defendant's products. Mr. Nixon followed up several  
 11 days later by sending an email to Plaintiff, referring Plaintiff to Defendant's website and  
 12 providing other materials.

13.       Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C.  
 14 § 227(a)(1) to place its daily calls to Plaintiff seeking to sell or solicit its business services . The  
 15 automated/prerecorded message played during the call received by Plaintiff was, on its face, a  
 16 standard form message, generated automatically, and for purposes of mass marketing and  
 17 distribution. The message informed Plaintiff of Defendant's business, thus the text message  
 18 constituted a mass-spam advertisement. Both of these characteristics are indicative of Defendant  
 19 utilizing an "automatic telephone dialing system" to place the aforementioned phone call.

20.       Defendant's calls constituted calls that were not for emergency purposes as  
 21 defined by 47 U.S.C. § 227(b)(1)(A).

22.       Defendant's calls were placed to telephone number assigned to a cellular  
 23 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §  
 24

1 227(b)(1).

2 12. Plaintiff is not a customer of Defendant's services and has never provided any  
3 personal information, including his cellular telephone number, to Defendant for any purpose  
4 whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to  
5 receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on  
6 his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.  
7

8 **CLASS ALLEGATIONS**  
9

10 13. Plaintiff brings this action on behalf of himself and all others similarly situated,  
11 as a member of the proposed class (hereafter "The Class") defined as follows:

12 All persons within the United States who received any telephone  
13 calls from Defendant to said person's cellular telephone made  
14 through the use of any automatic telephone dialing system or an  
15 artificial or prerecorded voice and such person had not previously  
16 consented to receiving such calls within the four years prior to the  
filing of this Complaint.

17 14. Plaintiff represents, and is a member of, The Class, consisting of All persons  
18 within the United States who received any telephone calls from Defendant to said person's  
19 cellular telephone made through the use of any automatic telephone dialing system or an artificial  
20 or prerecorded voice and such person had not previously not provided their cellular telephone  
21 number to Defendant within the four years prior to the filing of this Complaint.  
22

23 15. Defendant, its employees and agents are excluded from The Class. Plaintiff does  
24 not know the number of members in The Class, but believes the Class members number in the  
25 thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the  
26 expeditious litigation of the matter.  
27

28 16. The Class is so numerous that the individual joinder of all of its members is

impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

17. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class members to incur certain charges or reduced telephone time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and Class members.

18. Common questions of fact and law exist as to all members of The Class which predominate over any questions affecting only individual members of The Class. These common legal and factual questions, which do not vary between Class members, and which may be determined without reference to the individual circumstances of any Class members, include, but are not limited to, the following:

- 20       a. Whether, within the four years prior to the filing of this Complaint, 21       Defendant made any call (other than a call made for emergency purposes 22       or made with the prior express consent of the called party) to a Class 23       member using any automatic telephone dialing system or any artificial or 24       prerecorded voice to any telephone number assigned to a cellular 25       telephone service;
- 26       b. Whether Plaintiff and the Class members were damages thereby, and the 27       extent of damages for such violation; and
- 28       c. Whether Defendant should be enjoined from engaging in such conduct in 29       the future.

19. As a person that received numerous calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express

1 consent, Plaintiff is asserting claims that are typical of The Class.

2 20. Plaintiff will fairly and adequately protect the interests of the members of The  
3 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

4 21. A class action is superior to other available methods of fair and efficient  
5 adjudication of this controversy, since individual litigation of the claims of all Class members is  
6 impracticable. Even if every Class member could afford individual litigation, the court system  
7 could not. It would be unduly burdensome to the courts in which individual litigation of  
8 numerous issues would proceed. Individualized litigation would also present the potential for  
9 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to  
10 all parties and to the court system resulting from multiple trials of the same complex factual  
11 issues. By contrast, the conduct of this action as a class action presents fewer management  
12 difficulties, conserves the resources of the parties and of the court system, and protects the rights  
13 of each Class member.

14 22. The prosecution of separate actions by individual Class members would create a  
15 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
16 interests of the other Class members not parties to such adjudications or that would substantially  
17 impair or impede the ability of such non-party Class members to protect their interests.

18 23. Defendant has acted or refused to act in respects generally applicable to The Class,  
19 thereby making appropriate final and injunctive relief with regard to the members of the  
20 California Class as a whole.

21 **FIRST CAUSE OF ACTION**  
22 **Negligent Violations of the Telephone Consumer Protection Act**  
23 **47 U.S.C. §227 et seq.**

24 24. Plaintiff repeats and incorporates by reference into this cause of action the  
25

allegations set forth above at Paragraphs 1-25.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

26. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

27. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-29.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

30. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*; and
  - Any and all other relief that the Court deems just and proper.

## **SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*; and
  - Any and all other relief that the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of each and every claim so triable.

Respectfully Submitted this 21<sup>st</sup> Day of September, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Adrian R. Bacon  
Todd M. Friedman  
Adrian R. Bacon  
Law Offices of Todd M. Fr  
Attorney for Plaintiff

1                   **CERTIFICATE OF SERVICE**

2 Filed electronically on this 21<sup>st</sup> day of September, 2015, with:

3                   United States District Court CM/ECF system

4                   Notification sent electronically on this 21<sup>st</sup> day of September, 2015, to:

5                   Honorable Judge Dean D. Pregerson

6                   United States District Court

7                   Central District of California

8                   SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

9                   FRED R. PUGLISI

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13                  Attorneys for Defendant

14                  ENAGIC USA, INC.

15                  s/Adrian R. Bacon

16                  Adrian R. Bacon

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